IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

MFA.No. 230 of 2000
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IC.29/1997 of EMPLOYEES INSURANCE COURT, ALAPPUZHA
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APPELLANT/RESPONDENT:

THE DEPUTY DIRECTOR, E.S.I.
CORPORATION, TRICHUR.

BY ADV. SRI.T.V.AJAYAKUMAR
SRI.K.SANDESH RAJA

RESPONDENTS/APPLICANTS:

1. KERALA SMALL INDUSTR4ES DEVELOPMENT CORPORATION LTD., THIRUVANANTHAPURAM REP. BY ITS MANAGING DIRECTOR.

2. THE GENERAL MANAGER, DO. RAW MATERIAL DIVISION, GANDHI NAGAR, COCHIN - 20.

BY ADV. SRI.M.A.MANHU, SC, SIDCO

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ORDER ON C.M.P.NO.1331/2000 IN MFA 230/2000**

**DISMISSED**

**27.6.2007** **SD/-J.B.KOSHY, JUDGE**
**SD/-K.P.BALACHANDRAN, JUDGE**

**/TRUE COPY/**

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No. 230 of 2000

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**JUDGMENT**

Koshy, J.

In this case the Employees' State Insurance Corporation is challenging the order of the E.I. Court in holding that the first respondent Establishment is not covered under the E.S.I. Act. The first respondent Establishment is a Statutory Corporation, whose object is to develop small scale industries and give assistance for the marketing of their products and also to supply raw materials to them. Occasionally, some loading and unloading works may come during the course of work. The head load workers registered under the Kerala Headload Workers' Act are used for loading and unloading works, in such contingencies. They are sent by the Committee constituted under the Act. Their wages are paid by the Committee. Those workers are employed not only by the first respondent

Establishment, but also for various companies. On the very same day they may work for other companies. Only when work is available, as directed by the Committee, they go and work and the workers working on a particular day may not be coming for another day, when there is work. They are sporadic workers. The Apex Court in **Employees' State Insurance Corporation v. Premier Clay Products** (1994 Suppl. (3) SCC 567) held that Coolies hired by the respondent for sporadic work of loading and unloading are not even casual employees and not covered under the E.S.I. Act. Further, it is the Committee, who pays workmen compensation and other welfare measures to them, as provided under the Kerala Headload Workers' Act and Welfare Schemes framed thereunder and all Establishments, who are requesting for workers, depending on work, are bound to pay contributions. But, it is Committee, which fixes the wages and compensation to the workers. In any event, as rightly held by the E.I. Court, these workers are not liable to be covered

under the Act, as they are called for the sporadic nature of work, only when loading and unloading work is available. These workers, after finishing the work, go to other Establishments, wherever work is available, as deputed by the Statutory committee. The other permanent employees of the first respondent Establishment were getting more wages than required for coverage and admittedly, not covered during the relevant period. Taking into account all these aspects, the E.I. Court correctly found that the first respondent Establishment is not covered under the E.S.I. Act, during the relevant period. Therefore, we find no reason to interfere in the impugned order.

The appeal is, accordingly, dismissed.

(J.B.Koshy, Judge)

27th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No.230 of 2000

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**JUDGMENT**

27th June, 2007